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NO. 93-723

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

UNITED STATES OF AMERICA, *Petitioner,*

v.

X-CITEMENT VIDEO, INC., AND RUBIN GOTTESMAN, *Respondents.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES, NATIONAL COALITION AGAINST PORNOGRAPHY, "ENOUGH IS ENOUGH!", ALLIANCE FOR THE RIGHTS OF CHILDREN, AMERICAN COALITION FOR ABUSE AWARENESS, CHILDHELP USA, CHILD WELFARE LEAGUE OF AMERICA, FAMILY RESEARCH COUNCIL, INC., FOCUS ON THE FAMILY, JUSTICE FOR CHILDREN, NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, NATIONAL CENTER FOR REDRESS OF INCEST AND SEXUAL ABUSE, RELIGIOUS ALLIANCE AGAINST PORNOGRAPHY, AS *AMICI CURIAE* IN SUPPORT OF THE PETITIONER.

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MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

Comes now the National Law Center for Children and Families ("NLC"), by and through Counsel, to move this Court to permit it to file a brief *amicus curiae*. In the instant controversy, the United States has filed a Petition for a Writ of Certiorari asking this Court to review and overturn a decision rendered by the United States Court of Appeals for the Ninth Circuit. *See United States v. X-Citement Video*, 982 F.2d 1285 (9th Cir. 1992). NLC seeks to file a brief *amicus curiae* in support of this Petition. Sup. Ct. R. 37.2 permits NLC to move this Court for leave to file a brief when a party has not consented to allow it to file.

Solicitor General Drew Days, who represents the government in the present case, has consented to NLC's filing of an *amicus curiae* brief. A copy of this consent has been filed with the clerk of this Court. Mr. Stanley Fleishman, Counsel for the Respondents, has not replied to NLC's request for consent. A copy of this request has also been filed with the clerk of this Court.

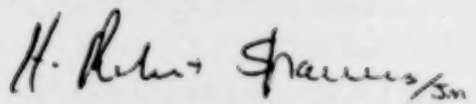
In the present case, NLC represents a diverse coalition of interest groups. *Amici Curiae* in this case represent virtually every segment of the American body politic. Each member of the coalition supporting the attached brief regards the disposition of the present Petition as crucial to the emotional and physical well-being of children.

Amici Curiae will bring to this Court's attention legal authority and argument in support of the Petition for a Writ of Certiorari not present in the Petition itself. The provision of such authority and argument will facilitate "the exercise of [this Court's] discretionary jurisdiction." Sup. Ct. R. 15.1. Thus, it is clear that the enclosed brief will be "of considerable help to the Court." Sup. Ct. R. 37.1.

In view of the foregoing, the National Law Center for Children and Families hereby moves this Court for

permission to file an *amicus curiae* brief in support of the Petitioner.

Respectfully submitted,



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COUNTERSTATEMENT OF QUESTION PRESENTED

In view of the government's compelling interest in eliminating child pornography, does the First Amendment require that federal laws proscribing the distribution of child pornography contain an element of scienter as to minority?

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INTEREST OF THE *AMICI CURIAE*

Amici comprise a broad collection of public interest groups whose membership include the survivors of childhood sexual abuse and professionals who expend considerable energy advocating legal and social reforms to protect children. *Amici*, while representing diverse political and religious perspectives, agree that this Court's decision regarding the Petition for Writ of Certiorari will directly affect the safety and well-being of children. For the Court's convenience, the Appendix contains a full description of the *Amici*.

SUMMARY OF REASONS FOR GRANTING THE PETITION

Contrary to the conclusion of the court below, constitutional precedent in no way requires that 18 U.S.C. § 2252 contain an element of scienter as to minority. This Court has previously held that constitutional precedent limiting the scope of laws proscribing obscenity exercise some degree of precedential force in the context of child pornography. With obscenity, this Court has held that the government may not impose strict criminal liability for distributing obscenity. Instead, the government must prove that a defendant accused of distributing obscenity had actual or constructive knowledge of the nature and character of the material at issue and of the act of distribution. Thus, precedent does not require that 18 U.S.C. § 2252 contain an element of scienter as to minority.

In the event that this Court should determine that scienter as to minority is constitutionally required, a careful analysis of precedent clearly reveals that constructive knowledge is sufficient. Moreover, precedent allows for proof of scienter through indirect or circumstantial evidence.

REASONS FOR GRANTING THE PETITION

I. 18 U.S.C. § 2252 Does Not Require that the Government Prove Scienter as to Minority in a Prosecution for Distributing Child Pornography.

A. Legislative History Clearly Reveals that Congress Did Not Intend to Include Scienter as to Minority as an Element of the Distribution Offense Defined by Section 2252.

While the ultimate holding of the court below is clearly incorrect, *Amici* agree that the defendant's knowledge of the minority of persons depicted in pornographic materials is not an element of the distribution offense defined in 18 U.S.C. § 2252. *See United States v. X-Citement Video*, 982 F.2d 1285, 1289 (9th Cir. 1992). The *X-Citement Video* court relied on the Ninth Circuit's prior ruling in *United States v. Thomas* that Section 2252 does not require that the government prove or allege scienter as to minority. 893 F.2d 1066 (9th Cir.), *cert. denied*, 498 U.S. 826 (1990). This Court let that ruling stand undisturbed.

Amici contend that the legislative history of Section 2252 strongly supports the conclusion that scienter as to minority is not an element of a Section 2252 distribution offense. The history of Section 2252 reveals that Congress did not intend to require scienter as to minority. In 1984, Congress amended Section 2252 to accommodate this Court's decision in *Ferber v. New York*, which held that government has the power to proscribe non-obscene pornography containing children. 458 U.S. 747 (1982); *see* Child Protection Act of 1984, Pub. L. No. 98-292, 98 Stat. 204 (1984)("1984 Act"). The legislative history of the 1984 Act does not make reference to the knowledge element of Section 2252.

Thus, it is necessary to examine Congress' intent with respect to scienter in the original version of Section 2252. *See* Protection of Children Against Sexual Exploitation Act of 1977, Pub. L. No. 95-225, 92 Stat. 7 (1978)("1977 Act"). Congress' intent in the 1977 Act is clear. The conference committee indicated that they intended that Section 2252 would impose criminal liability on any person "who knowingly transport[s], ship[s], or mail[s] for the purpose of sale or distribution ... any such material." *See* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 95-811, 95th Cong., 1st Sess. (1977) *reprinted in* 1978 U.S.C.C.A.N. 69, 71. The Joint Explanatory Statement of the Committee of Conference does not indicate that a Section 2252 defendant must have knowledge that the proscribed material contains minors engaging in sexual activity.[1] Moreover, in a letter to the Senate Judiciary Committee, Assistant Attorney General Wald, now Judge Wald, correctly adduced that "the defendant's knowledge of the age of the child is not an element of the [Section 2252] offense." *See* S. Rep. No. 438, 95th Cong., 1st Sess. (1977) *reprinted in* 1978 U.S.C.C.A.N. 40, 64.

It is appropriate to presume that Congress' intent not to require knowledge as to minority in the original version of Section 2252 carried over into the 1984 Act, except where provisions of the 1984 Act expressly altered provisions of the 1977 Act. The 1984 Act is silent on the question of scienter.

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[1] The government cites an exchange between Senators Roth and Percy concerning the knowledge requirement of § 2252. Pet. for Cert. at 8-9. This exchange tends to indicate that Senator Roth believed that § 2252 required scienter as to minority. However, a statement by one senator during legislative debate is less instructive as to the intent of the entire Congress than the conference committee report. Statements made during floor debates attempt to garner support for legislation and reflect the views of the speaker. Statements of legislative intent contained in conference reports, issued by the committee that puts legislation in its final form, are infinitely more probative of the intent of Congress.

To conclude that Congress' intent with respect to scienter in the 1984 Act differs from and supersedes its intent in the 1977 Act is to conclude that Congress implicitly repealed a portion of Section 2252. The presumption of transferred legislative intent is necessary and applicable here because "repeals by implication are not favored." *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 112 S. Ct. 683, 690 (1992)(quoting *Posadas v. National City Bank*, 246 U.S. 497, 503 (1936)).

In light of the legislative history of Section 2252, the court below correctly concluded that §2252 does not require the government to prove scienter as to minority.

B. The First Amendment Does Not Require the Government to Prove Scienter as to the Minority of Persons Depicted "Engaging in Sexual Conduct" in a Prosecution for Distributing Child Pornography under 18 U.S.C. § 2252.

i. *Ferber v. New York* and *Osborne v. Ohio* Do Not Require Proof of Scienter as to the Minority of Persons Depicted in Child Pornography.

On two occasions, this Court has addressed the constitutional propriety of proscriptions against child pornography. *Ferber v. New York*, 458 U.S. 747 (1982)(upholding federal statute proscribing distribution of child pornography); *Osborne v. Ohio*, 495 U.S. 103 (1990)(upholding state statute proscribing simple possession of child pornography). On neither occasion did this Court expansively discuss the level of scienter that the Constitution requires in the context of child pornography. *See Ferber* 458 U.S. at 765 (some scienter required); *Osborne*, 495 U.S. at 114 n.9 (holding that recklessness on the part of defendant accused of possessing child pornography is constitutionally sufficient showing of scienter). The present case poses the

question whether the Constitution mandates that 18 U.S.C. § 2252 include an element of scienter as to the minority of persons depicted in child pornography. An analysis of precedent reveals that the Constitution does not require that Section 2252 include such a scienter requirement.

As a threshold matter, it is clear that Section 2252 is not a "pure" strict liability crime. Rather, it requires the government to prove that a distributor of child pornography have knowledge that he is transporting material interstate. Consequently, 18 U.S.C. § 2252 does not violate the *Ferber* Court's admonition that "criminal responsibility may not be imposed without some element of scienter on the part of the defendant." 458 U.S. at 765.

Additionally, Section 2252 should be interpreted to require scienter as to the sexually explicit nature of the materials distributed. In *Hamling v. United States*, this Court concluded that it is constitutionally sufficient to prove only that the defendant in an obscenity prosecution knew of the nature and character of the material at issue. 418 U.S. 87, 119-24 (1974). That rationale is directly applicable here. *Cf. Ginsberg v. New York*, 390 U.S. 629, 643-44 (1968). As in *Hamling*, this Court should hold that Section 2252 requires a showing that defendants accused of distributing child pornography knew of the character of the material at issue.

By not requiring scienter as to minority, while at the same time requiring scienter as to the act of distribution and the nature and character of the material distributed, Section 2252 "put[s] pressure upon the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals." Roscoe Pound, The Spirit of the Common Law 52 (1921)(discussing propriety of strict liability statutes); *see also* Oliver Wendell Holmes, The Common Law 75 (1881)(strict criminal liability is appropriate because it forces actors to "find out at his [sic.] own peril whether the other facts are present which would make the act criminal.") Compelling distributors of constitutionally protected

expressive material to avoid distributing unprotected sexually explicit speech is fully consistent with precedent. In *Hamling*, this Court observed:

> "The precise course of the line [which every criminal statute draws] may be uncertain, *but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk.*"

418 U.S. at 124 (quoting *United States v. Wurzbach*, 280 U.S. 396 (1930))(emphasis added); *see also Roth v. United States*, 354 U.S. 476, 491-93 (1957). It is thus permissible for 18 U.S.C. § 2252 to impose liability on child pornography distributors in such a manner as will advance society's interest in protecting children.

ii. *Smith v. California* Does Not Require that 18 U.S.C. § 2252 Include an Element of Scienter as to Minority Because Imposing Strict Liability as to Minority Will Not Chill a Substantial Amount of Protected Speech.

Contrary to the assertion of the court below, *Smith v. California* does not require that Section 2252 include an element of scienter as to minority. 361 U.S. 147 (1959). Rather, *Smith* and its progeny contribute to a regime of procedural and substantive requirements that this Court has imposed on government efforts to enforce adult obscenity laws. Laws proscribing the dissemination of child pornography, such as 18 U.S.C. § 2252, have not been subject to similar constraints because they do not affect, in any significant manner, the availability of protected speech. *See Osborne*, 495 U.S. at 110; *Ferber*, 458 U.S. at 773.

The *Smith* decision represents one attempt to provide protection to non-obscene, sexually explicit speech by limiting government efforts to suppress obscenity. In *Smith*,

this Court invalidated an ordinance which imposed true strict criminal liability on retailers who distribute obscenity because it "tend[ed] to work a *substantial* restriction of the freedom of the press and speech." 361 U.S. at 150 (emphasis added). *Smith* stands for the proposition that statutes proscribing the distribution of obscenity must contain an element of scienter. *Id.* This requirement serves to guarantee that constitutionally protected speech will not be chilled when the government exacts criminal punishment for the distribution of obscenity. *See Roaden v. Kentucky*, 413 U.S. 496 (1973); *accord Mishkin v. New York*, 383 U.S. 502, 510 (1966); *Lee Art Theatre, Inc. v. Virginia*, 392 U.S. 636, 637 (1968) (per curiam).

The government has the right to eliminate obscenity but has no right to employ obscenity laws to censor other sexually explicit speech. *Miller v. California*, 413 U.S. 15, 36 (1973). In other words, obscenity constitutes a sub-set of unprotected expressive activity but, because it is only a sub-set, government must take care not to trample upon the constitutionally protected parent class. Furthermore, because there is a constitutional right to distribute non-obscene pornographic materials to adults, all pornography must be initially presumed to be non-obscene, until proven otherwise. *See Marcus v. Search Warrant*, 367 U.S. 717, 737 (1961); *accord Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 62 (1989); *New York v. P.J. Video*, 475 U.S. 868, 869 (1986). The Court in *Smith* protected the presumption of non-obscenity by requiring scienter. In the face of criminal liability without fault for the distribution of obscenity, responsible retailers may, as a practical matter, be compelled to assume that all sexually explicit material is unprotected obscenity and refrain from offering any sexually explicit material for sale. Such a result would fly in the face of both the letter and spirit of *Smith* and its progeny.

18 U.S.C. § 2252, on the other hand, proscribes only pornographic materials containing children and is blind to the

question of obscenity. In *Ferber*, this Court recognized that there is no constitutional right to produce or distribute pornography containing minors. 458 U.S. at 762. This Court has also recognized that government has more freedom to proscribe child pornography than to regulate obscenity. *Compare Osborne*, 495 U.S. at 108 (government may ban mere possession of child pornography) *with Stanley v. Georgia,* 394 U.S. 557, 564-568 (1969) (government may not ban mere possession of obscenity). This is so because the government's interest in eliminating child pornography is more urgent than the government's interests in proscribing obscenity. *See, e.g., American Library Assoc. v. Barr*, 956 F.2d 1178, 1181 (D.C. Cir. 1992) (interest in eliminating child pornography more important than interests in regulating obscenity).

The threat to protected speech that gave rise to the result in *Smith* is not present under 18 U.S.C. § 2252. Proscribing pornography containing minors runs no significant risk of restraining constitutionally protected speech. *Compare Freedman v. Maryland*, 380 U.S. 51, 59-60 (1965)(purpose of presumption of non-obscenity to avoid prior restraints) *with Ferber*, 458 U.S. at 773 (laws proscribing child pornography unlikely to significantly restrain protected speech). This is so because the constitutional tension between a parent class of protected speech and a sub-class of unprotected expressive material is not present in the context of child pornography. There is no class of sexually explicit material containing minors engaging in sexual conduct that is protected by the First Amendment; all such visual depictions are unprotected. *See Ferber*, 458 U.S. at 775 (O'Connor, J., concurring); *see also Osborne*, 495 U.S. at 112 (only visual depictions of "mere nudity" of minors protected by First Amendment). Accordingly, this Court has never held that sexually explicit speech containing minors is presumptively protected by the First Amendment.

Furthermore, the test for child pornography set forth in Section 2252 is objective and precise when compared to the test for obscenity. *Compare Mishkin*, 383 U.S. at 510 (describing obscenity doctrine as somewhat ambiguous) *with Ferber*, 458 U.S. at 764 (government need not prove prurient appeal or redeeming value). Because the standard for child pornography is much clearer, responsible retailers can readily ascertain whether a given piece of sexually explicit merchandise is unprotected child pornography. *Cf. United States v. Weigand*, 575 F.2d 1303, *cert. denied*, 439 U.S. 916 (1987)(federal child pornography standard not vague); *Mishkin*, 383 U.S. at 871 ("The Constitution requires proof of scienter to avoid the hazard of self-censorship *and to compensate for the ambiguities inherent in the definition of obscenity.*")(emphasis added).

Thus, Section 2252 does not threaten to effect a scheme of self-censorship that would result in a substantial reduction of protected expressive material, as was the case with the statute invalidated in *Smith*. Were this Court to permit the government to impose strict liability as to minority on a distributor of child pornography, distributors of sexually explicit material would not be compelled to assume that all sexually explicit material is child pornography and refrain from offering it for sale. At the same time, it would advance the government's compelling interest in preventing "[the] sexual exploitation and abuse of children." *Ferber*, 458 U.S. at 757; *see* Janet Reno & James Smart, *Dealing with Child Abuse and Neglect: a Prosecutor's Viewpoint*, 8 Nova L.Rev. 271, 274-75 (1986)(child sexual abuse necessitates legal intervention). As this Court has recognized, the distribution of child pornography contributes to child sexual exploitation and abuse by fostering a market for pornographic depictions of child abuse that will likely be used to seduce children into harmful sexual activity. *Osborne*, 495 U.S. at 111 & n.7. Section 2252 reduces the availability of this unprotected material by forcing

distributors of pornography to monitor the material they sell. Finally, Section 2252 does not restrain protected speech in any significant way. Thus, neither the letter nor the spirit of *Smith* require scienter as to minority in Section 2252.

II. If this Court Determines that Scienter as to Minority is Present in Section 2252, Constitutional Precedent Requires Only that the Defendant Posses Constructive Knowledge that the Pornography Contains Minors and that Scienter May be Proven Through Circumstantial Evidence.

In the event that this Court should determine that some scienter is required in order for Section 2252 to pass constitutional muster, precedent requires only that a Section 2252 defendant posses constructive knowledge of minority. *Cf. Hamling*, 418 U.S. at 119-24; *Mishkin*, 383 U.S. at 510-11. The Court in *Mishkin* rejected the assertion of a defendant convicted of distributing obscene matter that there was insufficient proof of scienter. 383 U.S. at 511. The *Mishkin* Court held that sufficient evidence of scienter had been introduced because the defendant had engaged in activities indicative of knowledge, although there was no direct evidence of scienter. *Id.*

In *Osborne*, this Court held that in the context of child pornography, recklessness is a constitutionally sufficient level of scienter. 495 U.S. at 115 That rationale is directly applicable to the present case. By imposing criminal sanctions on distributors who disregard a substantial risk that they are trafficking in child pornography, Section 2252 will compel distributors to take due care to ensure that the sexually explicit material they are distributing does not contain children.

Furthermore, *Osborne* strongly indicates that the *Hamling* and *Mishkin* line of authority permitting proof of scienter through indirect and circumstantial evidence should

be applied to Section 2252. *Mishkin*, 383 U.S. at 512 (upholding obscenity conviction based on circumstantial evidence of scienter); *Hamling*, 418 U.S. at 121-22 (same); *Ginsberg*, 390 U.S. at 643-44 (same). Recklessness often involves failure to take due care. Such proof frequently involves circumstantial evidence. That is, the objective facts which render an act reckless must be introduced as evidence. From these facts and the behavior of the defendant, a trier of fact may infer that the defendant acted with reckless intent. Section 2252 only imposes criminal sanctions against distributors who know of the nature and character of the material distributed. In these circumstances, it is incumbent on the distributor to inspect the material to ascertain to whether it contains minors. Failure to so inspect is a reckless act. It is constitutionally appropriate and necessary as a practical matter for Section 2252 to permit proof of reckless intent through circumstantial evidence. It is illegal to distribute visual depictions of minors engaged in sexual conduct. In light of *Hamling* and *Mishkin*, It is constitutionally appropriate to permit proof of intent through circumstantial evidence.

CONCLUSION

The court below erroneously "decided an important question of federal law which has not been, but should be, settled by this Court." Sup. Ct. R. 10.1.(c). This Court provides the only forum in which the constitutional scope of 18 U.S.C. § 2252 may be authoritatively determined. *See United States v. 37 Photographs*, 402 U.S. 363, 369-70 (1970). This provides a compelling reason to grant the Petition for a Writ of Certiorari.

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APPENDIX

INTEREST AND DESCRIPTION OF *AMICI*

The **National Law Center for Children and Families** ("National Law Center") is a Washington D.C. metro based legal center dedicated to the protection of children and the preservation of families though the enforcement of existing laws and the promulgation of new legislation against illegal pornography and sexual exploitation.

Through the legal staff, resource library, and publications, the National Law Center actively participates in assisting courts, prosecutors, investigators, legislators, public officials, researchers, and parents to stop illegal pornography and its concomitant harms of sexual exploitation of children, women, and families.

Consultation with many county, city and civic leaders around the nation allows the National Law Center to assist in the drafting and enactment of new legislation. This legislation concerns obscenity, child pornography, and materials harmful to minors. The National Law Center is also involved in the dissemination of vital information to legislators, law enforcement, public officials and concerned citizens alike.

Seminars, newsletters and updated prosecutors' manuals are part of the National Law Center's strategy. This strategy is dedicated to equipping law enforcement with the necessary information, pleadings, and legal techniques necessary to win the war for our children and families.

The National Law Center has participated in numerous Amici Curiae briefs before this Court, including *Osborne v. Ohio, Alexander v. United States* and *Knox v. United States*. Presently, the National Law Center is involved in publishing

training materials and reference manuals on child sexual exploitation and pornography. Its legal staff has conducted legal and law enforcement training for thousands of investigators and prosecutors since 1984.

The **Child Welfare League of America** ("CWLA") is a federation of more than 700 child welfare agencies in the public and voluntary sectors. CWLA is almost three-quarters of a century old and has long been involved in the development of quality program, practice and policy in the field of child welfare, including child protective services. CWLA standards for quality practice address services to abused and neglected children, including children who have been sexually abused. CWLA standards expressly recognize that child sexual abuse includes the exploitation of children and child pornography. CWLA is committed to strong legal protections to ensure that children are not abused through pornographic exploitation and that children are not placed at heightened risk of sexual abuse and victimization by pedophiles as a result of child pornography.

The **Religious Alliance Against Pornography** ("RAAP") was founded in July 1986 by dozens of senior religious leaders who gathered to address the role of hard-core and child pornography in a wide range of health, safety, and moral concerns. These included the relationship of pornography to child molestation, sexual violence, sexually transmitted diseases, rape and human exploitation.

RAAP members include senior leaders in the Roman Catholic, Jewish, Protestant, Orthodox, Mormon and inter-faith communities. Collectively, they serve over one-hundred twenty million citizens throughout the United States. RAAP is likely the broadest religious alliance to ever address any social concern in the United States.

The purpose of RAAP is to bring into clear focus hard-core and child pornography's role in the assault on human dignity and the consequent dehumanization and abuse that it promotes. The devastating impact of hard-core and child pornography is the one issue that has drawn an immense variety of faiths and traditions together in agreement.

While continuing to strongly support and respect the freedoms of speech and expression as guaranteed by the First Amendment, RAAP members are in unanimous agreement that obscenity and child pornography, which are not protected by the Constitution, are life-endangering evils which must be eliminated.

RAAP supports the objectives of the National Law Center for Children and Families and its efforts to pass and strengthen obscenity and child protection laws. RAAP is also active on an international basis, helping facilitate efforts in Asia, Europe and South America to stem the role of pornography in the abuse and degradation of children, women, men and families.

In summary, RAAP is working to (1) create public awareness of pornography's destructive impact on society, to (2) help citizens in community and government leadership understand the moral, physical and social dimensions of sexual exploitation and illegal pornography, and (3) motivate citizens and faith groups to take appropriate and responsible action in this regard.

Childhelp USA has come to the aid of children in distress since 1959. Childhelp is committed to fighting child abuse and neglect with research, treatment, and prevention programs. We operate the National Child Abuse Hotline (1-800-4-A-CHILD and 1-800-2-A-CHILD for the hearing impaired with TDD equipment), America's only 50-state, 24-

hour, toll-free crisis intervention program. The Hotline is staffed by trained counselors with a masters degree or higher and has a data bank of over 60,000 service providers across the country. Childhelp also operates two residential treatment facilities for the most severely physically and sexually abused children ages 2 through 12, one in southern California, and one in central Virginia, and recently initiated programs in Knoxville, Tennessee. Our services include therapeutic foster homes, Head Start programs, group programs for teen and adult survivors of abuse, training programs for child care workers and foster parents, and education and advocacy initiatives.

The **National Center for Missing and Exploited Children** (the "Center") is a non–profit, tax–exempt corporation chartered in the District of Columbia in 1984, with goals of decreasing the incidence of crimes against children, effecting positive changes in public law and policy, encouraging an awareness of the significance of all crimes against children, and assisting families and those who seek to protect children. The Center works in cooperation with the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice in coordinating the efforts of law enforcement, social service agencies, elected officials, judges, prosecutors, educators, and the public and private sectors on child protection issues.

The Center has been funded by the Office of Juvenile Justice and Delinquency Prevention since 1984 to implement tasks under 42 U.S.C. §§5771–5777, including operation of the national toll–free hotline for reports of missing children; operation of the national resource center and clearinghouse for prevention, investigation, prosecution, and treatment of the missing and exploited child case; and assistance to OJJDP in performing its task of coordinating federally funded programs related to missing children. The Center actively

assists federal and state law enforcement agencies' efforts to reduce the incidence of sexual exploitation, including passing reports of child pornography received on the hotline to agents of the U.S. Customs Service, U.S. Postal Inspectors Service and local police departments for investigation. The Center provides information on specific federal and state statutes and legislation affecting children, including child pornography laws, state missing children clearinghouse, non–profit organizations, and interested child advocates, and training to professionals.

The **"Enough is Enough!"** campaign's mission is to greatly reduce sexual violence and to prevent children, women, men and families from becoming victims by eliminating child pornography and removing hard-core and illegal pornography from the marketplace.

This is an educational program with a plan to mobilize America's women in the battle against the abusive, predatory material that is flooding our nation. Pornography leaves in its wake broken lives and homes, as its chain of abuse victimizes women and their children.

The "Enough is Enough!" campaign includes women from varied backgrounds, professions, religions, non-profit organizations and political affiliations. This is a campaign with a focused target (that which is illegal), and a diverse, growing constituency. It is a unique effort in that (moderate, liberal and conservative) women are joining together to deal with hate literature which eroticizes inequality and violence, preys upon children and holds a fatal attraction for many men.

Over 30% of the states' First Ladies and numerous other women of influence have become members of the National Committee of Support, and this list is expanding.

The national launch of the "Enough is Enough!" campaign was held November 1992. Since that date, educational meetings and training seminars have been held in cities from Coast to Coast. This campaign is not creating a new organization rather initiating a movement. Local action is on the increase as women are empowered to bring about change. They are encouraged, educated and provided with materials to equip them to succeed in their efforts. Women are investing their influence to change the way America thinks about pornography.

The **National Coalition Against Pornography** ("N-CAP") was founded in 1983 by Dr. Jerry R. Kirk to respond to the devastating impact of illegal obscenity and child pornography on America. N-CAP holds that these materials have a direct relationship to the skyrocketing incidence of rape, sexual violence and child molestation in the United States. Numerous respected studies confirm this opinion.

With members representing over 50 religious groups, denominations, citizen action groups and foundations, N-CAP works to increase public awareness of the harm caused by obscenity, indecency and child pornography and to implement a number of programs designed to minimize the threat they pose to our society.

These programs include educational/training seminars designed to teach citizens and law enforcement officials how to rid their communities of illegal obscenity and child pornography. Other programs include: victim service development training; legal and law enforcement training on obscenity and child pornography investigations and prosecutions; extensive resource development and distribution, including a wide range of research reports documenting the harm of obscenity, indecency and child pornography; expert

testimony for federal and state legislatures that are considering stronger obscenity and child protection laws. N-CAP founder, Dr. Jerry Kirk, provided testimony before both the U.S. House of Representative and the U.S. Senate in support of the Child Protection and Obscenity Enforcement Act of 1988.

Each of N-CAP's programs is active on national basis, with specific involvement in dozens of local cities at any given time. The fundamental mission and purpose of N-CAP is in protecting children through the elimination of child pornography and obscenity, and the restriction of indecency.

Focus on the Family is a Christian, non–profit organization committed to strengthening the emotional, psychological and spiritual health of children and their families in the United States and throughout the world. Amicus President, Dr. James C. Dobson, a renowned child psychologist, served on the Attorney General's Commission on Pornography in 1986.

Amicus has produced two major videos, "A Winnable War" and "Fatal Addiction" and assisted in one book *Pornography: A Human Tragedy* which directly discusses the harms of pornography to children, men, women and families in America. The videos and book have been seen and read by thousands of concerned citizens nationwide. Amicus' daily radio broadcasts dealing with family concerns and interests are heard by more than one million people daily over 1400 stations. Its monthly magazine has a circulation of 1.85 million. Amicus regularly receives letters and telephone calls from and counsels with families who have children devastated by pornography, molestation and abuse.

Focus on the Family works to preserve and protect the family, and thus has particular knowledge about the impact of

child pornography that will be helpful to the Court in this case.

Justice For Children ("JFC") is a national child advocacy organization headquartered in Houston, Texas. JFC works for the child who is abused, abandoned, neglected or simply lost in the child welfare, family court, and/or criminal justice systems. Unlike other child advocacy organizations which have been formed to prevent child abuse through education and social programs, JFC focuses on protecting the abused child once an initial report has been made to the authorities. We work and speak for those who are too young or too frightened to speak for themselves.

The **National Center for Redress of Incest and Sexual Abuse** ("Center for Redress") is a foundation established to address the legal needs of adult survivors and child victims of sexual abuse. Located in Washington, D.C., its purpose is to build a comprehensive network of attorneys across the country who are dedicated to furthering the rights of survivors under the law; to develop educational outreach programs, focusing on members of the judicial and legislative branches of government; to facilitate a national grassroots effort to support projects in progress on the issue of sexual abuse and incest; and to litigate test cases under civil law related to childhood sexual victimization. The Center for Redress believes that the connection between childhood sexual abuse and child pornography has been established beyond doubt, and supports the enforcement of laws aimed at preventing the production and distribution of child pornography, such as the law at issue in this case.

The **American Coalition for Abuse Awareness** ("ACAA") is an ad hoc coalition of individuals and groups committed to resolving the issue of sexual abuse of children. The ACAA has been founded to seek enactment of federal

and state legislation establishing the right of a child to be free from sexual victimization, and appropriate protections to assure that such victimization does not occur; enactment of federal and state legislation extending or eliminating statutes of limitations relating to civil lawsuits brought by adult survivors of childhood sexual abuse; formation of a broad based Coalition to support such legislation; development of public and media awareness of the issue of sexual abuse of children; establishment of a comprehensive network of legal professionals nationwide dedicated to advancing the legal rights of victims of childhood sexual abuse through the justice system; development of educational outreach programs for members of the judicial and legislative branches of government; establishment of a national body to make policy recommendations on issues related to childhood sexual abuse, protection of children, and adult survivors of abuse. Because child pornography both involves and perpetuates the sexual victimization of children, the ACAA supports the respondent in this proceeding.

Family Research Council, Inc. is a voice for the pro-family movement in Washington, D.C. and provides policy analysis, legislative assistance and research for pro-family organizations. It also seeks to educate legislators on issues which affect American families. Its research, publications and films on the impact of pornography have been distributed to over 400,000 scholars, organizations and citizens.

The issues in this case directly affect the physical, psychological and emotional well being of children, parents and communities throughout the United States. Family Research Council, Inc. works through legislative assistance and public policy to preserve and protect the family and thus has particular knowledge about the harms of child pornography that will be helpful to the Court in this case.

Alliance for the Rights of Children (ARCH), a national alliance of children's rights advocacy organizations, respectfully urges the U.S. Supreme Court to grant certiorari on the above case on the issue of whether the First Amendment requires that the government prove scienter as to the minority of "pornographic actors and actresses" in a prosecution for distributing child pornography under 18 U.S.C. Sec. 2252.

Alliance for the Rights of Children is working nationwide with thousands of organizations and individuals who are concerned over the rising reports of child molestation and the failure of the legal system to protect the victims. Child pornography is a multi-billion dollar international business that promotes and perpetuates sex crimes against children.

ARCH strongly supports the arguments in this brief and urges the Court to hear this case.